



United States General Accounting Office
Report to Congressional Committees

August 1992

POSTAL PROCUREMENT

Ethics Violations Did Not Invalidate an Automation Contract



147260

General Government Division**B-249080****August 13, 1992**

**The Honorable John Conyers, Jr., Chairman
The Honorable Frank Horton, Ranking
Minority Member
Committee on Government Operations
House of Representatives**

**The Honorable William Clay, Chairman
The Honorable Benjamin A. Gilman, Ranking
Minority Member
Committee on Post Office and Civil Service
House of Representatives**

**The Honorable Mary Rose Oaker, Member
Subcommittee on Compensation and Employee
Benefits
Committee on Post Office and Civil Service
House of Representatives**

This report responds to your request that we review aspects of the U.S. Postal Service's (USPS) acquisition of an image processing subsystem (IPSS) to support the remote bar coding element of the mail processing automation program. You questioned a number of issues involving the propriety of the contract USPS awarded to ElectroCom Automation L.P., to obtain this equipment, which ElectroCom produced under license from a German firm, AEG Electrocom GmbH (AEG). Your questions involved issues surrounding the solicitation and award of the contract, including whether ElectroCom was eligible to compete for the contract and whether USPS officials complied with USPS standards of ethical conduct and the Procurement Integrity Act. You were also concerned that USPS is not under federal procurement regulations and that this fact could have affected the award of the contract.

On June 19, 1992, we briefed representatives of both Committees on the results of our work concerning the following:

- whether ElectroCom was properly allowed to compete for the IPSS production contract,**
- whether USPS officials who visited vendors' facilities adhered to USPS standards of conduct and the Procurement Integrity Act,**
- whether and to what extent USPS officials visited participating vendors' manufacturing sites,**

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- the reasons USPS added three evaluation factors to the solicitation for the production phase,
 - the legal effect of the timing of the signing of the AEG-ElectroCom licensing agreement on the award of the production contract,
 - whether the manner in which USPS attorneys handled the bid protest in this purchase was objective and independent,
 - whether USPS published in the Commerce Business Daily appropriate notices relating to the IPSS procurement,
 - the extent to which AEG and ElectroCom may dominate USPS' mail automation contracts,
 - whether and to what extent other executive branch agencies have awarded contracts to AEG and ElectroCom, and
 - whether USPS records covering the IPSS procurement were properly maintained.

Representatives of the Committees agreed that the oral information we presented adequately answered the questions in the request letter and asked that we summarize this information in a report. It was agreed that any supplementary questions related to the procurement would be conveyed in a subsequent request letter.

Results in Brief

In doing our work on the above questions, we found that USPS acted within the scope of its procurement authority in awarding the IPSS contract to ElectroCom, which has secured more than half of all postal automation contract dollars over the past 10 years. Several USPS officials accepted meals, and some accepted travel from AEG—a German firm affiliated with ElectroCom—on visits to Germany. These actions violated the law and governmentwide and USPS standards of conduct but while creating the appearance of a conflict of interest did not provide us with a basis to conclude that the award was improper. The contract could also have been awarded to ElectroCom under rules governing procurement by federal agencies.

Background

The Postal Reorganization Act of 1970 permitted USPS to establish its own procurement rules and regulations, operating like a private business when it is advantageous to do so. Consequently, USPS is exempt from many of the laws, regulations, and executive orders on procurement that apply to most other executive branch entities, which generally are governed by the Federal Acquisition Regulation (FAR).

USPS rules provide more flexibility to contracting officers than FAR allows most federal agencies. For example, USPS procurement rules require adequate competition, rather than full and open competition from all responsible sources.¹ USPS procurement policy focuses on the business objective of meeting USPS' needs and permits USPS to strike a balance between users' needs and vendors' access to postal business. USPS' policy also allows contracting officers to limit competition to contractors or items that are known to be capable of meeting USPS' needs.

IPSS is a major component of the USPS remote bar coding program. IPSS is designed to allow USPS to add bar codes to envelopes at a mail processing facility by processing computerized video images at a remote site. The images are of mail pieces that optical character readers cannot successfully code to the 9-digit zip code level.²

The IPSS procurement consisted of two stages—the modification and test agreement (MTA) and the production stages. On October 9, 1987, USPS issued the solicitation for the MTA stage. This initial step is USPS' method for identifying, evaluating, and selecting technologies and equipment that have been developed by industry and are available currently in the market.

MTA involved testing the equipment of competing firms at USPS' facilities in Merrifield, VA. USPS required that all proposals be received by March 1, 1988. One competing firm, TRW Financial Systems, Inc., submitted its proposal on April 4, 1988, more than a month after the due date.

Five firms competed for MTA contracts, and on June 28, 1988, USPS awarded contracts to the following offerors: TRW Financial Systems, Inc., of Berkeley, CA; Bell & Howell Company's DocuMail Systems Division, of Evanston, IL; and AEG Olympia Aktiengesellschaft (now known as AEG Electrocom GmbH), of Konstanz, Germany. The test at Merrifield began in October 1989 and lasted 19 days.

The solicitation for the production stage of the IPSS procurement was issued on June 29, 1990. In August 1990, USPS amended its solicitation. Among other things, this amendment added three criteria under which proposals would be evaluated. In September 1990, USPS received proposals from TRW, Bell & Howell, and ElectroCom Automation L.P., of Arlington, TX. ElectroCom had had a long-standing business teaming relationship

¹USPS' Procurement Manual defines adequate competition as the solicitation and participation of a sufficient number of vendors to ensure that the price paid by USPS is fair and reasonable.

²Optical character readers are electronic scanners that interpret addresses and apply bar codes.

with AEG. ElectroCom was also an AEG subcontractor for the MTA contract. And under a general teaming agreement and specific licensing agreements, ElectroCom manufactured and sold AEG-designed equipment to USPS.

USPS subsequently held discussions with each offeror. On February 8, 1991, USPS requested that best and final offers be received by February 15, 1991. The production contract, in the amount of \$95 million for the base period, was awarded to ElectroCom on February 25, 1991. The base period was scheduled to run through calendar year 1992. Contract options 1 and 2 are to begin in January 1993 and January 1995, respectively. Under these options, USPS intends to extend deployment of IPSS equipment beyond the 25 sites scheduled for the base period. If both options are exercised, equipment would be deployed to a total of 229 sites.

On March 11, 1991, TRW filed a bid protest with USPS. In its protest (later joined by Bell & Howell), TRW's allegations included USPS' failure to (1) follow the evaluation criteria set forth in the solicitation and (2) conduct meaningful discussions with TRW by not informing TRW that its initial acquisition price exceeded the funding ceiling. On May 29, 1991, USPS' Associate General Counsel, Office of Contracts and Property Law, denied the protest.

USPS' General Counsel serves as USPS' Designated Agency Ethics Official. Ethics education and training activities are to be carried out by USPS officials, including the Alternate Designated Agency Ethics Official (an Assistant General Counsel). The Alternate Designated Agency Ethics Official is charged with providing ethics briefings on an ad hoc basis.

Approach

Our objective was to respond to 10 specific questions regarding the propriety of USPS' award of the IPSS contract to ElectroCom. We examined USPS contract and bid protest files and reviewed USPS procurement manuals, travel regulations, travel vouchers, trip reports, the law, and executive branch and USPS regulations governing employees' ethical conduct. We also interviewed USPS officials who were involved in the IPSS procurement. Further details on our objectives, scope, and methodology are in appendix I.

GAO Analysis

The results of our work on the 10 questions raised about the IPSS contract award are summarized in the following sections.

USPS Was Correct in Allowing Electrocom to Compete for the IPSS Production Contract

USPS' Procurement Manual sets forth policies and procedures controlling contracting by each of USPS' three procurement organizations—the Procurement and Supply Department, the Facilities Department, and the Office of Transportation and International Services. USPS' Procurement Manual requires, among other things, that purchases be made based on adequate competition whenever feasible and that evaluation of proposals be based on criteria provided in the solicitations.

The solicitation for the MTA stage, issued October 9, 1987, stipulated that “firms must have participated and completed testing in this modification and test agreement to be eligible for the production procurement.” However, the subsequent solicitation for the production stage did not contain a provision limiting competition to the three firms—TRW Financial Systems, Inc.; Bell & Howell Company's DocuMail Systems Division; and AEG Olympia Aktiengesellschaft—that participated in MTA. Rather, the language in that solicitation limited competition to the systems developed under the MTA contracts.

By not including a stipulation in the production stage solicitation similar to the one in the MTA stage solicitation, USPS relaxed its requirement that a firm had to successfully complete MTA in order to compete for the production contract. Generally, agencies can amend specifications to reflect their determination of how best to accommodate their minimum needs and are entitled to use relaxed specifications that they reasonably conclude will satisfy these needs in order to obtain competition. Accordingly, USPS was acting within its authority to make this change. Moreover, USPS provided notice to the competitors for the production contract that ElectroCom would be considered as an offeror. Both a Commerce Business Daily announcement and the solicitation itself indicated that ElectroCom, Bell & Howell, and TRW could compete. ElectroCom, a licensee of AEG, offered the system AEG had tested in the MTA stage. Therefore, ElectroCom was properly allowed to compete for the production contract.

USPS contracting officials said it was always their intention that ElectroCom would be allowed to compete for the production contract. When we pointed out that ElectroCom would have been prohibited from competing for that contract if the production solicitation had contained wording similar to that in the MTA solicitation—limiting the vendors to those firms that competed in MTA—the contracting officials said that the language in the MTA solicitation was flawed.

Ethics Violations by USPS Officials Did Not Invalidate the IPSS Contract Award

USPS is not governed by the provisions of the Procurement Integrity Act, but it is covered by law (5 U.S.C. 7353) and executive branch regulations concerning employees' ethical conduct, Title 5 of the Code of Federal Regulations (CFR), Part 735. USPS has also promulgated its own standards of conduct for its employees, with which USPS procurement officials must comply. These standards are published in 39 CFR Part 447 and in the USPS Employee and Labor Relations Manual. The law and standards provide, in part, that government officials (including USPS employees) are not permitted to accept anything of value from anyone doing business with their federal employer. This restriction includes meals in restaurants and company dining rooms. To supplement the USPS Employee and Labor Relations Manual, the Assistant Postmaster General for Procurement and Supply issued a booklet in February 1988 explaining the fundamental principles involved in the standards of conduct.

Ethics violations by USPS officials occurred on several trips to Germany. The IPSS contracting officer and those accompanying him (including a Postal Inspection Service Inspector) routinely accepted meals from AEG (lunches provided in the facility's dining room and dinners in restaurants) when they were visiting that firm's facilities in Germany. USPS officials said they had accepted meals from AEG for several years—at least since 1987. We were told by several of the travelers that on a few occasions, spouses who accompanied USPS employees were also AEG's guests for dinner.

The contracting officer and others who visited AEG characterized the acceptance of these meals as a "cultural expectation" and explained that AEG officials expected that USPS personnel would dine with them during these trips. USPS' Alternate Designated Agency Ethics Official said these travelers had neither consulted his office on whether to accept AEG's offers nor reported to him at the completion of their trips that they had accepted meals.

The contracting officer said that within the past year, the Director of USPS' Office of Procurement instructed that procurement personnel stop accepting free meals. The Director said this instruction was a reiteration of existing USPS policy. As a result, the contracting officer said he now pays the maximum amount USPS travel-expense rules allow for lunches he eats in AEG's dining room and for dinners he has in restaurants with AEG officials. This method of compensation could result in an under- or over-reimbursement. USPS nonprocurement staff who accompanied him said they now fully reimburse AEG for meals the contractor provides.

A 6-day trip by two Assistant Postmasters General—for Procurement and Supply and for Engineering and Technical Support—in July 1990 included visits to AEG's facilities; German and Swiss postal sites; and Zermatt, a small Swiss town in the Alps. The Assistant Postmaster General for Procurement and Supply provided us with the following purposes for his visit: (1) to review the status of USPS' open contracts with AEG, (2) to tour the facilities to get a design and development update, and (3) to discuss and resolve open issues related to expanding U.S. sources of competition. He was provided with lunches in AEG's dining room and was AEG's guest at dinners in restaurants in Germany. He said he accepted AEG's offers because it was "common courtesy" to do so. AEG also provided a car and driver for several trips while he was in Germany and Switzerland. We have determined that these trips involved travel of about 800 miles.

The travel expense report for the then Assistant Postmaster General for Engineering and Technical Support (now Regional Postmaster General, Northeast Region) provided the following reason for his trip to Germany and Switzerland: to visit German and Swiss post offices to "exchange technical information and direction" and to discuss "engineering and procurement business issues and relationships with AEG executives." During his stay, he said he also was provided with meals by AEG, both at the firm's facilities and in a restaurant. AEG also provided almost all of his transportation while he was in Germany and Switzerland.

The timing of the trip taken by the two Assistant Postmasters General, the roles they and other USPS travelers played in the IPSS procurement, and the number of contracts AEG has with USPS enhanced the appearance that a conflict of interest could have occurred. For example, the trip taken by the Assistant Postmasters General to AEG occurred about a month after the initial production solicitation was issued and before the August 1990 solicitation amendment containing the three additional criteria on which offerors' proposals would be evaluated. Further, the Assistant Postmaster General for Engineering and Technical Support issued the requirement for IPSS. In addition, the contracting officer, who had taken several trips to AEG, signed the MTA and production contracts, and some of the staff who had traveled with him were involved in scoring vendors' proposals for the IPSS production contract.

Our examination of travel vouchers filed by the contracting officer and those with whom he traveled, as well as discussions with the travelers, showed that accepting meals from AEG was a routine practice. It was poor judgment for AEG to offer, and for USPS officials to accept, meals and

transportation while AEG was doing business with USPS. This practice violated the law as well as governmentwide and USPS standards of conduct. We believe this pattern, together with the events on the trip of the Assistant Postmasters General, create the appearance of a conflict of interest in the award of the IPSS contract. But this appearance provides us with an insufficient basis to conclude that the IPSS contract award was improper.

USPS Officials Visited All Competing Vendors' Manufacturing Sites

Between the time the MTA solicitation was issued (October 9, 1987) and the time the production contract was awarded (February 25, 1991), USPS officials visited vendors competing in the procurement. During this period, the IPSS contracting officer visited TRW in Berkeley, CA, eight times; Bell & Howell in Evanston, IL, nine times; AEG in Konstanz, Germany, eight times; and ElectroCom in Arlington, TX, once. He said that he frequently took these trips accompanied by other USPS staff. He also said that on his trips to AEG, he was accompanied by the program manager, engineers, and a Postal Inspector. Twenty of the contracting officer's 26 trips were for technical reviews. We also found that the Assistant Postmaster General for Procurement and Supply and the then Assistant Postmaster General for Engineering and Technical Support traveled to ElectroCom's plant in Arlington, TX, for one day in January 1989 and that they traveled to AEG in Germany in July 1990.

After the contract was awarded to ElectroCom, the contracting officer said that he and other USPS staffers visited ElectroCom in Arlington, TX, about every other month. These visits were for technical reviews.

USPS' Regulations Permitted the Addition of Three Evaluation Factors to the Production Solicitation

In the original solicitation for the production contract, issued June 29, 1990, life-cycle cost was the sole criterion on which proposals were to be evaluated. However, on August 13, 1990, (before proposals were submitted by the offerors) USPS revised the solicitation by adding the following evaluation factors:

- reasonableness of price,
- technical evaluation and ability to fulfill delivery requirements, and
- other business and technical features that would offer value to USPS.

The IPSS contracting officer said that the criteria were added to get the "best value" for USPS.

Under its procurement regulations, USPS was allowed to add evaluation criteria to the solicitation as it saw necessary. According to USPS officials, the changes were made after internal discussions. USPS officials decided that the original solicitation did not provide sufficient criteria for providing best value. We found no evidence in the contract files that these criteria were added to the solicitation because of discussions with vendors.

**The Timing of the
AEG-Electrocom Licensing
Agreement Signing Did Not
Legally Affect the
Production Contract
Award**

The licensing agreement between AEG and ElectroCom, formally allowing ElectroCom to manufacture and offer AEG's technology, was signed October 5, 1990, 11 days after the September 24, 1990, due date for proposals. However, the timing of the agreement signing did not legally affect the award of the production contract. We note that the production solicitation did not require any specific licensing agreement to be submitted with proposals. Even if the solicitation could have been understood to require the submission of licensing agreements, the issue of whether any firm has the capacity to furnish the solicited product with the necessary licenses relates to that firm's responsibility. A determination of responsibility does not need to be made until the date of the award. ElectroCom produced a signed licensing agreement well before the contract was awarded. Finally, we note that when it is in USPS' best interest, a USPS contracting officer has some latitude in making certain procurement decisions. For example, the IPSS contracting officer decided to accept TRW's proposal for the MTA procurement, even though the proposal was 30 days late. He said he accepted the late proposal because it was in USPS' best interest to do so. Similarly, the contracting officer's acceptance of the executed licensing agreement after the due date for proposals could also have been determined to be in USPS' best interest.

**USPS' Handling of the Bid
Protest Appeared to Be
Objective and Independent**

Protests of USPS' procurements are handled by a group within its Office of General Counsel. This group has about 20 attorneys divided into 3 sections to handle all property and contract law except for facilities work awarded by field offices. Attorneys from this group provide legal assistance to USPS procurement staffs in all aspects of contracting, from reviewing proposals to litigating contractor claims. In an effort to provide impartiality, the Associate General Counsel who decides USPS bid protests said he assigns an attorney who was not previously involved with the solicitation to analyze any protests arising from the contract action.

TRW protested the award of the production contract to ElectroCom. The protest was handled by USPS attorneys and was denied. Our review of the bid protest file showed no evidence of a lack of objectivity and independence in USPS' bid protest decision. The USPS attorney who handled the bid protest said she had no discussions with the attorney who handled the day-to-day legal aspects of the procurement. However, as we pointed out in our August 1991 report, the most frequent complaint from private attorneys who were involved with USPS bid protests was that the USPS process does not provide for an independent protest unit.³

USPS Published Notices Relating to the IPSS Procurement in the Commerce Business Daily

USPS' Procurement Manual requires that solicitations and contract awards be synopsized in the Commerce Business Daily, a Department of Commerce publication that lists government agency solicitations and contract awards. We found that USPS complied with the requirement by announcing the solicitations and awards of both the MTA and production contracts in the Commerce Business Daily. For the MTA stage, the December 18, 1986, announcement said that the complete system would be tested on live mail in a major post office and that the design would be considered for competitive procurement of the production stage based on the model's performance in MTA. The May 22, 1990, announcement for the production stage said that negotiations would be conducted with "the following firms who have successfully completed a previous requirement for the IPSS MTA: ElectroCom Automation, Inc., . . . TRW Financial Systems, Inc., . . . and DocuMail Division, Bell & Howell." The announcement went on to say that the notice was being published for information purposes only and that copies of the solicitation were not available. This announcement provided notification that ElectroCom was competing for the contract. If a vendor wanted to protest ElectroCom's inclusion in the competition, it could have done so at any time before September 24, 1990, when the solicitation closed. No such protests were filed.

AEG and Electrocom Received the Majority of USPS' Mail Automation Contracts Since Fiscal Year 1983

AEG and ElectroCom participate in USPS' automated mail programs, as do firms such as Westinghouse, TRW, Martin Marietta, Pitney-Bowes, Burroughs, Unisys, AT&T, and Bell & Howell. AEG has a licensing agreement with ElectroCom and has had similar agreements with several other U.S. firms to produce mail automation equipment using AEG technology.

³Procurement Reform: New Concepts Being Cautiously Applied at the Postal Service (GAO/GGD-91-103, Aug. 6, 1991).

USPS' figures show that from fiscal year 1983 through March 27, 1992, contracts awarded to AEG and firms using AEG technology totaled about \$1.44 billion. This figure represented about 65 percent of the total \$2.2 billion USPS awarded for mail automation projects in that period. ElectroCom was awarded about \$1.2 billion of these contracts, representing about 56 percent of the total contract dollars awarded for these automation projects. AEG's contracts (excluding AEG-designed equipment produced by other firms) totaled \$41.1 million (1.9 percent) in those years. Table 1 shows the dollar amounts of mail automation contracts awarded to AEG, firms using AEG designs, ElectroCom (for contracts on which it did not use AEG designs), and all other firms.

Table 1: USPS Contracts for Mail Automation Projects Since Fiscal Year 1983

Dollars in millions

Fiscal year	AEG alone	Firms using AEG design	ElectroCom alone ^a	Other vendors	Total
1992 ^b	\$ 0	\$ 0	\$ 0	\$51.3	\$ 51.3
1991	2.0	161.7	0	228.1	391.8
1990	17.1	208.9	0	219.3	445.3
1989	5.2	498.5	2.4	4.0	510.1
1988	8.8	23.8	0	13.9	46.5
1987	5.8	40.7	0	210.0	256.5
1983-86	2.2	466.6	0.2	32.9	501.9
Total	\$41.1	\$1,400.2^c	\$2.6	\$759.5	\$2,203.4

^aThese amounts reflect awards to ElectroCom (and its predecessor, E-Systems) for which ElectroCom did not use AEG designs.

^bAmounts cover first 6 months.

^cElectroCom made up 88 percent of this total, or about \$1.2 billion.

Other Federal Agencies Have Awarded Few Contracts to AEG and Electrocom

In fiscal year 1989 and the first half of fiscal year 1990, AEG and ElectroCom were awarded contracts by federal agencies, such as the Internal Revenue Service, the U.S. Army, Navy, and Air Force as well as the Defense Logistics Agency. However, these contracts totalled \$7,238,000, a negligible amount compared to AEG's and ElectroCom's contracts with USPS. Federal agencies awarded these contracts for such services or products as repairing equipment and providing office machines and electron tubes and associated hardware for search and navigation equipment. The number and dollar amounts of these awards are shown in table 2.

Table 2: Number and Dollar Value of Contracts Awarded to AEG and Electrocom by Federal Agencies During Fiscal Years 1989 and 1990

Dollars in millions

Fiscal year	Firm	Number of contract actions	Value of awards
1989	AEG	7	\$1.1
1989	ElectroCom	2	1.8
Subtotal			\$2.9
1990 (first 6 months)	AEG	9	2.8
1990 (first 6 months)	ElectroCom	2	1.5
Subtotal			4.3
Total			\$7.2

USPS' IPSS Contract Records Were Properly Maintained

USPS' Procurement Manual requires that records be kept of all actions taken concerning solicitations and contracts. We found that USPS complied with this requirement. In the IPSS contract files we examined, documentation included the solicitations, proposals, signed contracts, minutes of meetings USPS held with offerors on the contract, and correspondence between USPS and offerors or potential offerors.

Conclusions

Although USPS procurement rules allow more flexibility in selecting contractors than do federal procurement regulations, we believe the IPSS production contract could have been awarded to ElectroCom even if FAR had governed the procurement. We also believe USPS did not violate USPS procurement rules in awarding the IPSS contract. Allowing ElectroCom, a licensee of AEG, to compete for the production contract and the addition of three evaluation factors to the solicitation for the production contract were both permitted by USPS procurement rules.

However, the award of the IPSS contract to ElectroCom was clouded to some extent because USPS procurement officials and others involved in the procurement violated applicable law and regulations governing acceptance of anything of value from prohibited sources. We found that USPS officials routinely accepted meals and, on several occasions, transportation from AEG when they visited Europe. Most officials who accepted the meals said accepting them was a reflection of normal overseas business practices, and one said it was accepted out of courtesy. USPS' Alternate Designated Agency Ethics Official said USPS staffers had not

consulted his office to find out whether they should accept meals, nor did they report them to him upon completing their trips.

We believe accepting meals from AEG was the continuation of a long-standing practice that violated the law and applicable standards of conduct. In addition, this practice created the appearance of a conflict of interest in the award of the IPSS contract. Despite this appearance, we did not find evidence to conclude the IPSS contract award was improper.

Recommendations

To lessen the likelihood of further ethics violations on future USPS business trips, we recommend the Postmaster General

- take action to better ensure USPS employees comply with the provisions of USPS and governmentwide standards of conduct that prohibit accepting anything of value from vendors doing business with USPS and
- direct USPS' Designated Agency Ethics Official to take appropriate action with respect to those who committed the ethics violations.

Agency Comments

In a letter responding to our draft report (see app. II), the Assistant Postmaster General for Procurement and Supply agreed that ethics violations had occurred but disagreed that there was evidence in the report to support the conclusion that "an apparent conflict of interest" was involved. He was concerned that the draft lacked balance because it emphasized the violations. In the letter, the Assistant Postmaster General said that on 9 of the 10 issues addressed we concluded that USPS had complied with regulations, policies, and procedures governing its procurement process, yet the overall impression conveyed from the draft was different from the conclusions on the individual issues. In the letter, the Assistant Postmaster General said that his own ethics violation did not cloud the validity of the decision to award the IPSS contract to ElectroCom.

Regarding our first recommendation, the Assistant Postmaster General said he intends to take appropriate action within the procurement organization to clarify and communicate the ethical standards and violations cited in our report. He said he will refer our second recommendation—to direct USPS' Designated Agency Ethics Official to take appropriate action with respect to those who committed the ethics violations—to the appropriate USPS officials.

We made several changes in our draft directed at dispelling the impression that the overall results of our assessment were negative. The report still contains relatively more discussion of the ethics violations than of the other findings because of the need to provide the evidence to support our conclusion that the ethics violations created the appearance of a conflict of interest. We believe the report supports our conclusion with an adequate but not excessive amount of detail. While the Assistant Postmaster General said he would communicate the message of our first recommendation to his procurement staff, we believe the Postmaster General should call attention to the ethics laws and standards to all staff offices because some of the travelers we identified were not on the procurement staff.

As agreed, we are sending copies of this report to USPS' Board of Governors; the Postmaster General; the Postal Rate Commission; and the Chairman and Ranking Minority Member of the Senate Subcommittee on Federal Services, Post Office and Civil Service, Committee on Governmental Affairs. We will also make copies available to others upon request.

The major contributors to this report are listed in appendix III. If you have any questions concerning this report, please contact me on (202) 275-8676.



L. Nye Stevens
Director, Government Business
Operations Issues

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Abbreviations

AEG	AEG Electrocom GmbH
CFR	Code of Federal Regulations
FAR	Federal Acquisition Regulation
IPSS	image processing subsystem
MTA	the modification and test agreement
USPS	U.S. Postal Service

Objectives, Scope, and Methodology

To respond to the Committees' questions regarding the propriety of the contract award to ElectroCom, we did the following.

- To determine whether ElectroCom was properly allowed to compete for the IPSS contract, we obtained and reviewed the USPS Procurement Manual and the IPSS solicitations for both phases of the procurement and compared the manual's provisions with these solicitations. We also reviewed the changed language between the MTA and the production solicitations.
- To determine whether USPS procurement officials who visited vendors' facilities adhered to the USPS standards of conduct and the Procurement Integrity Act, we obtained and reviewed applicable legislation and executive branch and USPS regulations governing ethical conduct. We also obtained and reviewed travel vouchers, trip reports, and itineraries covering trips taken by USPS officials and compared the information to the requirements of USPS and governmentwide standards of conduct. We interviewed selected USPS officials who made the visits and the AEG official who arranged one of the trips to Europe. We also interviewed USPS' Alternate Designated Agency Ethics Official.
- To determine whether and to what extent USPS officials visited participating vendors' manufacturing sites, we obtained and reviewed travel vouchers and interviewed the USPS officials involved in the procurement.
- To determine the reasons USPS added three evaluation factors to its production solicitation, we interviewed USPS procurement officials and obtained and reviewed appropriate procurement documents, including the initial and amended solicitations and related correspondence files.
- To determine the legal impact of the timing of ElectroCom and AEG signing the licensing agreement, we reviewed contract files and USPS' Procurement Manual. We also reviewed the documents to determine the legal effect of the signing date.
- To determine the independence and objectivity of USPS' attorneys investigating TRW's bid protest, we reviewed the bid protest decision and the documents contained in USPS' bid protest file. We also interviewed the USPS Associate General Counsel who signed the protest decision and the attorney who drafted it.
- To determine whether USPS published appropriate notices relating to the IPSS procurement in the Commerce Business Daily, we obtained and reviewed Commerce Business Daily issues for the MTA and production stages of the procurement.
- To determine the extent to which AEG and ElectroCom may dominate USPS' mail automation contracts, we obtained and reviewed a list of USPS

contracts awarded during fiscal years 1983 through the first 6 months of 1992 for mail automation projects.

- To determine the extent to which other executive branch agencies awarded contracts to AEG and ElectroCom, we obtained and reviewed information from the Federal Procurement Data System on agencies' purchases from the two companies in fiscal years 1989 and the first 6 months of 1990.
- To determine whether the IPSS procurement records were properly maintained in USPS' IPSS procurement files, we reviewed the USPS Procurement Manual provisions involving documentation requirements and compared them to the IPSS documents in the files.

USPS awarded two Early Activation Pilot Site contracts to TRW and Bell & Howell. These contracts were awarded between the MTA and production stages of the IPSS procurement. Because USPS' Early Activation Pilot Site contract awards to TRW and Bell & Howell and an award to AEG for additional development work were not part of USPS' IPSS award, our work did not include these contracts.

We did our work in Washington, D. C., between October 1991 and June 1992, in accordance with generally accepted government auditing standards.

Comments From the U.S. Postal Service

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



UNITED STATES POSTAL SERVICE
ROOM 4011
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-6200
TEL (202) 268-4041
FAX (202) 268-2755

JOHN J. DAVIN
Assistant Postmaster General
PROCUREMENT AND SUPPLY DEPARTMENT

July 2, 1992

Mr. L. Nye Stevens
Director, Government Business
Operations Issues
U. S. General Accounting Office
441 G Street NW Room 3858A
Washington, DC 20548-0001

Re: Comments on Draft GAO Report GGD-92-XX,
Ethics Violations Did Not Invalidate the IPSS Contract

Dear Mr. Stevens:

As the senior USPS officer responsible for the award of the IPSS contract and the overall conduct of the Postal Service procurement process, I want to respond personally to the questions raised in the subject GAO Report, which you reviewed with me on June 18, 1992. I appreciate this opportunity to provide my comments, while regretting the prominence you chose to give to the ethical aspects incidental to one of the ten questions raised, which, in itself, had no real bearing on the contract you examined.

The report you discussed with me was a draft response to inquiries from several House members concerning the propriety of the USPS award of a contract for an Image Processing Subsystem (IPSS) to ElectroCom Automation, L.P., in February 1991. The IPSS supports Remote Bar Coding, an integral part of the USPS mail processing automation program. The representatives raised ten questions about this procurement action and the circumstances surrounding it, and you presented findings and conclusions about each question in the draft report.

In responses to nine of the ten questions raised, GAO confirmed that USPS had fully complied with the regulations, policies, and procedures governing its procurement process. The report further concluded that the procurement had been conducted in a manner that was not only consistent with USPS procurement policy and practice, but was also in keeping with FAR rules and regulations if, by way of comparison, they were applied to this specific procurement. The report's summary conclusions support my own conviction,



See comment 1.

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based on close to 40 years of experience in procurement, that the IPSS procurement process was, itself, conducted consistent with the high standards which properly apply to the public procurement process.

See page 14.

I believe, however, that because of the manner in which the subject was presented, the draft report does not properly and equitably validate the Postal Service's procurement process on these nine significant issues. Moreover, because of the emphasis given to the tenth issue, which the report itself concludes did not adversely impact the contract process, and the matter-of-fact presentation of the positive findings about the other process issues, the overall impression left on reading the report is different from, and not supported by, the conclusions stated.

See comment 2.

The tenth question was whether the actions of USPS officers and employees during visits to vendor facilities were in compliance with ethical conduct laws and rules. Although the draft report contains findings of technical violations of ethical conduct--acceptance of lunches and dinners, and transportation related to site visits, from a supplier, AEG, in Germany--it contains no evidence to support any inference that these technical violations compromised the integrity of the IPSS procurement.

Let me address the ethics issue in two parts. The first concerns visits made to AEG by the USPS contracting officer assigned to the IPSS procurement and his team. It is my view that the technical violations cited--accepting meals from the host during a number of meetings at its location--did not affect the propriety of the IPSS procurement. The contracting team visits to AEG were spread over several years and a variety of contract matters. Their misinterpretation of the postal ethical policy appeared to relate more to their perception of cultural differences abroad and a sincere desire not to offend or embarrass the people they were meeting with. The clarity of that intent was confirmed by the practice they followed of omitting these meals from their per diem allowance. As you noted, this deviation was stopped after it was brought to the attention of the Director of the Office of Procurement.

See comment 3.

The second part of this issue involves my own conduct as Assistant Postmaster General for Procurement and Supply during a single visit to AEG in July 1990. This trip was unrelated to the IPSS procurement. The meeting with senior AEG executives was arranged at my request, and that of the then-Assistant Postmaster General for Engineering and

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Technical Support, to resolve, face-to-face, certain difficult contractual issues with AEG that were hindering licensing of U.S. manufacturing firms. Resolving these issues allowed us to broaden the base of potential U.S. suppliers of AEG-licensed equipment, thereby increasing competition and expanding our sourcing options. During our meetings, I accepted two working lunches in the AEG company dining room, two working dinners at nearby restaurants, and several car trips related to the visit.

I accepted these specific working meals and incidental automobile transportation from my hosts out of common courtesy and in the sincere belief that these items did not represent anything "of value." In my long procurement career, I have always avoided accepting anything that I thought was, or could be construed to be, ethically compromising. However, until this current incident, I have never believed that infrequent meal reciprocity with a host supplier represented even a technical ethical compromise. Please be assured that it is not a practice in which I have ever "routinely" engaged. To my personal embarrassment, I have been informed by the USPS Ethical Conduct Officer that accepting even a single meal under the circumstances I described can be construed as a technical violation of the USPS ethical conduct standards.

As the USPS's chief procurement official, I am fully aware that I, of all people, must conduct myself in a way that avoids even the appearance of impropriety. I accept complete responsibility for the technical violation, and offer both the USPS and the government my apologies and assurances that there will never be a reoccurrence. To clear my personal sense of obligation, I have written to the President of AEG, explaining the situation and enclosing my personal check for \$150.00. This amount represents my after-the-fact estimation of the out-of-pocket cost of the host services I received from AEG during my visit. I have sent you a copy of that letter. I hope this will resolve any financial record of services received that were not paid for by myself.

Nevertheless, I continue to question the draft report's suggestion that this technical violation did in any way "cloud" the validity of the IPSS sourcing and award decision. The report presents no evidence to support an inference of even an apparent conflict of interest. In fact, in the concluding sentence of the section discussing this issue, the report states that "we did not find evidence

See comment 4.

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to conclude the IPSS contract award was improper." That important review outcome, in my view, somehow became lost in the tone of the total report.

See page 13.

The GAO review concludes with two specific recommendations, both of which relate to the ethics question. Following publication of your document, it is my intention to take appropriate action within the procurement organization to clarify and communicate directly to my people the ethical violations cited and my own heightened sensitivity to the definition which states that any meal is considered "something of value." I will do this with the awareness and support of USPS senior management and our Ethical Conduct Officer. As to your second recommendation suggesting internal postal review for possible further administrative action, I will see to it that it is referred to the appropriate people. I do take some consolation in the fact that there are no policy or process changes recommended, resulting from the other nine questions, regarding the USPS procurement process. Since that was the focus of the original contract concern, I appreciate the report's positive compliance answers in those important areas.

Five and one-half years ago, after a successful 35-year career in private industry, I took over USPS's Procurement and Supply Department in the belief that I could help to rebuild it into a modern, efficient, professional organization embodying the best of public and private procurement practices. A cornerstone of that rebuilding program, the *Plan for Continuous Improvement*, has been my commitment to visible integrity. One of our first products was a simple, readable ethical conduct manual to accompany the Code of Ethical Conduct for Postal Employees, which every procurement employee is required to read and sign annually. I personally feel very strongly about the need to have, maintain, and demonstrate a strong commitment in procurement management to the highest standard of ethical conduct.

Here at the Postal Service, we have accomplished many of the objectives in the Plan: a streamlined set of procurement regulations written in plain English; a model professional training program; a record of increasingly efficient procurements representing "best value" to the Postal Service; and significant, measurable improvements in customer satisfaction, to name just a few. I have appreciated the work done by GAO to strengthen our postal procurement process and believe we must continue to work together in positive ways to "reinvent" more responsive, accountable government. This is particularly true in the government procurement arena.

Appendix II
Comments From the U.S. Postal Service

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Thank you for the opportunity to respond to the draft report. I hope that my comments will help clarify the record of this review as set forth in the draft document. The opportunity for continuous improvement of the postal procurement process is a never-ending challenge. I continue to be committed to that objective and appreciate the help of GAO in meeting our goals.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. Dain". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

GAO Comments

1. The Assistant Postmaster General for Procurement and Supply asserts that our draft report confirms that USPS had fully complied with the regulations, policies, and procedures governing its procurement process. Our findings are limited to the 10 questions we addressed and do not cover all aspects of the IPSS contract.

2. In this paragraph and throughout the letter, the Assistant Postmaster General refers to the acceptance of meals and transportation as “technical violations.” Our report does not characterize the acceptance of meals and transportation as “technical violations”; we say it is a violation of the law and governmentwide standards of conduct. Title 5 U.S.C. 7353 provides that “no . . . officer or employee of the executive . . . branch shall . . . accept anything of value from a person . . . doing business with . . . the individual’s employing entity . . .” Further, our evidence shows that the travel accepted by the Assistant Postmasters General was not entirely confined to “site visits.”

Our report also does not contain an “inference that these . . . violations compromised the integrity of the IPSS procurement.” We believe the violations created the appearance of a conflict of interest, which the law and regulations were intended to prevent.

3. Documents show the purpose of the Assistant Postmaster General for Procurement and Supply’s visit to AEG was to review the status of USPS’ open contracts with AEG. We believe that given the volume of business USPS does with AEG and firms using AEG’s designs, as reflected in table 1 in our report, the trip was important. The acceptance of meals and transportation by USPS officials created the appearance of a conflict of interest, which becomes magnified by the amount of business USPS does with AEG and firms using AEG’s technology.

Further, in this and other sections of the letter, the Assistant Postmaster General refers to “working lunches” and “working dinners.” The distinction between meals that may not be accepted and working meals that may be accepted depends in part on whether the diners leave a meeting place and go elsewhere to eat. Office of Government Ethics rules provide that if the diners leave the meeting room in order to eat a meal, as the USPS officials did at AEG, such a meal is not considered an acceptable working meal and must be reimbursed. In that context, if an employee accepts a nonworking meal from a firm doing business with the employee’s agency and the cost is not reimbursed, such acceptance is a violation of the law and governmentwide standards of conduct. Although

the Assistant Postmaster General for Procurement and Supply reported he recently reimbursed AEG for what he estimated to be AEG's cost for the services he received during his visit, there is no indication in the letter that other officials have done so.

4. We continue to believe, as we concluded in our report, that the award was clouded to some extent because the law and the standards of conduct were violated. The violations created an appearance of a conflict of interest that clouded the award of the IPSS contract.

Further, the letter asserts that our "report presents no evidence to support an inference of even an apparent conflict of interest." The law and the standards of conduct—both USPS' and those applicable governmentwide—were violated. Evidence shows that USPS officials who visited AEG accepted meals and some transportation from AEG. That acceptance gives the appearance of a conflict of interest. In the letter, the Assistant Postmaster General agreed that USPS' Ethical Conduct Officer said that accepting even a single meal can be construed as a violation. We agree with that assessment.

Major Contributors to This Report

General Government
Division, Washington,
D.C.

William F. Engel, Assistant Director, Government Business
Operations Issues
Nancy A. Patterson, Evaluator-in-Charge
Warren T. Nagel, Senior Evaluator

Office of the General
Counsel, Washington,
D.C.

V. Bruce Goddard, Senior Attorney

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